

REMARKS

Entry of the foregoing, re-examination and reconsideration of the subject matter identified in caption, as amended, pursuant to and consistent with 37 C.F.R. §1.116, and in light of the remarks which follow, are respectfully requested.

Claim 1 has been amended to insert the feature of canceled claim 4 and claim 5 has been amended to correct its dependency. Claims 1-3, 5-20, 23 and 24 are currently pending in this application.

Claims 1-3, 8, 9, 14, 16, 19, 20 and 23 were finally rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,876,551 (Jackson) in view of U.S. Patent No. 4,902,722 (Melber) for the reasons set forth in paragraph (3) of the Office Action. Withdrawal of this rejection is requested in view of the above amendments and the following remarks.

Applicants believe this rejection is unsound for the reasons provided on pages 7-9 of the Response filed December 15, 2004. However, to expedite prosecution, the feature of claim 4 has been added to claim 1. Since claim 4 was not rejected on this ground, it is clear that the §103(a) rejection over Jackson '551 in view of Melber '722 is inapplicable to the presently amended claims and should be withdrawn. Such action is earnestly requested.

Claims 1-20, 23 and 24 were rejected under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,291,011 (Edlund) in view of Melber '722 for the reasons given in paragraph (4) of the Office Action. Claims 1-20 were rejected under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,337,104 (Draxo et al.) in view of Melber '722 for the reasons given in paragraph (5) of the Office Action. Reconsideration of these rejections is requested for at least the following reasons.

On page 10 of the Response filed December 15, 2004, Applicants unequivocally stated that "the present application and the Edlund '011 patent were, at the time the present invention was made, owned by or subject to an obligation of assignment to the same person, i.e. the Johns Manville organization". On pages 10-11 of the same Response, Applicants unequivocally stated that the present application and the Draxo et al. '104 patent were, at the time the present invention was made, owned by, or subject to an obligation of assignment to the same person, i.e. Johns Manville Europe GmbH." Accordingly, both Edlund '011 and Draxo et al. '104 have been disqualified under 35 U.S.C. §103(c) as prior art under 35 U.S.C. §103(a) based on 35 U.S.C. §102(e).

The Examiner argues in paragraph (13) of the Office Action that Edlund '011 and Draxo et al. '104 have different inventive entities than the present application and therefore qualify as prior art under 35 U.S.C. §102(e). Prior art which qualifies under §102(e) and is applied under 35 U.S.C. §103(a) is precisely the prior art which is disqualified under §103(c), i.e. "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title." Note M.P.E.P. §706.02(l)(1). For these reasons, the §103(a) rejections over Edlund '011 and Draxo et al. '104 have been obviated and should be withdrawn.

Claims 1-20 were rejected on the ground of obviousness-type double patenting over claims 1-16 of Edlund '011 in view of Melber '722 for the reasons given in paragraph (7) of the Office Action. Claims 1-20 were rejected on the ground of obviousness-type double patenting over claims 1-23 of Draxo et al. '104 in view of

Melber '722 for the reasons given in paragraph (8) of the Office Action. Withdrawal of these rejections is respectfully requested for at least the following reasons.

Applicants inadvertently neglected to file the Terminal Disclaimer mentioned on page 11 of the Response filed December 15, 2004. Attached herewith are Terminal Disclaimer to remove the obviousness-type double patenting rejections. In view thereof, these rejections should be withdrawn.

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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